

JOE H. NETTLETON ET AL.  
APPELLANTS  
ELIAS JACA ET AL.  
INTERVENORS

IBLA 71! 1

Decided September 22, 1972

Appeal from a decision of Robert W. Mesch, Departmental hearing examiner (Idaho 1! 698) dismissing appeal from Boise district manager's allocation of grazing privileges.

ELIAS JACA ET AL.  
APPELLANTS  
JOE H. NETTLETON ET AL.  
RESPONDENTS

IBLA 72-34

Appeal from decision of Robert W. Mesch, Departmental hearing examiner (Idaho 1-699) remanding allocation of grazing privileges to Bureau of Land Management.

Decision in 72-34 affirmed; decision in 71-1 set aside and case remanded for further proceedings.

Grazing Permits and Licenses: Appeals -- Grazing Permits and Licenses: Apportionment of Federal Range

Where an appeal is taken from a hearing examiner's decision remanding a case to the Bureau of Land Management for reconsideration of the division of grazing use areas formerly grazed in common, the examiner's decision will not be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of 43 CFR 4110.

Grazing Permits and Licenses: Adjudication

When on appeal two grazing sub-units are so interrelated that apportionment cannot be properly determined for one without affecting the equities in the other, and it is determined that one of the apportionments should be remanded, both apportionments may be set aside and remanded so that they may be reconsidered together.

APPEARANCES: William F. Ringert, Esq., of Anderson, Kaufman, Anderson & Ringert for Elias Jaca et al.; W. F. Schroeder, Esq., of Schroeder, Denning & Hutchens for Joe H. Nettleton et al.; Robert S. Burr, Esq., Office of the Solicitor, Department of the Interior, for the Bureau of Land Management.

#### OPINION BY MR. GOSS

By an order of November 19, 1971, this Board consolidated grazing appeals IBLA 71-1 and IBLA 72-34 for joint consideration and issuance of a joint decision. Although these decisions had developed separately from two concurrent decisions of the Boise district manager, dated March 10, 1969, we have joined the appeals because they both involve the allocation of the 1969 grazing privileges for the grazing users in the Wilson Unit of the Boise grazing district (Idaho No. 1). The joint appeals are pursuant to the provisions of the Taylor Grazing Act, as amended, 48 Stat. 1269 et seq. (1935), 43 U.S.C. § 315 et seq. (1970), and the regulations in 43 CFR 1853.

The appeals have necessarily been considered separately to this point because the District Manager's decision in the Black Mountain Sub-Unit, Idaho 1-69-9 (IBLA 72-34), by its terms was placed in immediate full force and effect as authorized by 43 CFR 4111.4-3(e) and 1853.8(b). While Nettleton, Hoagland and Cummings followed the administrative appeal procedure in the district manager's Hardtrigger decision, Idaho 1-69-8 (IBLA 72-1), they sought immediate judicial review of the Black Mountain decision in the U.S. District Court for the District of Idaho. By an order of November 17, 1969, (Civil No. 1-69-29), the District Court stayed the effect of the district manager's Black Mountain decision pending a hearing of the matter in the Department of the Interior. However, by this time a hearing had already been held and a hearing examiner's decision had issued July 2, 1970, on the appeal in the allocations in the Hardtrigger Sub-Unit. The Black Mountain case was, therefore, subsequently considered by separate hearing and decision.

In IBLA 71-1 Joe H. Nettleton, Earl Cummings, and Roy M. Hoagland appealed to the Board from a hearing examiner's decision dated July 2, 1970, dismissing their appeals from a Boise district manager's decision. Elias Jaca, Jona Bass, and Dick Bass, other permittees in the sub-units, intervened at the hearing and have filed reply briefs in this appeal. The Office of the Field Solicitor, Department of Interior, also has filed a reply brief on behalf of the Bureau of Land Management.

In the companion case, IBLA 72-34, Elias Jaca appealed to the Board from a hearing examiner's decision, dated July 15, 1970, which

remanded this case to the Boise district manager for reconsideration of the use areas that will be assigned to Nettleton, Hoagland and Cummings in the Black Mountain and Hardtrigger Sub-Units of the Wilson Unit. Although the Bureau of Land Management originally indicated an intent to appeal from the hearing examiner's decision, the Board was informed that the Boise district manager had submitted a new proposal to the range users who have grazing privileges in the areas involved in both appeals, with favorable responses from most of them. As a consequence, the Office of the Solicitor advised that the Bureau chose not to prosecute its appeal. Nettleton, Hoagland and Cummings have filed reply briefs with the appeal.

The district manager issued his original decisions in these cases in response to the range users' applications for the 1969 grazing privileges in the Wilson Unit. The decisions concurred with the recommendations of the Advisory Board of the Boise district. Prior to this adjudication, 19 grazing applicants within the Black Mountain and Hardtrigger Sub-Units of the Wilson Unit had been requested to get together and prepare a workable plan for use and allocation of these federal grazing lands. The district manager's decisions, with certain exceptions, adopted the management plans submitted by the 19 grazing applicants. Taken together the decisions basically divided the Hardtrigger and the Black Mountain Sub-Units into various use areas, or allotments, altered some of the previous boundaries of the sub-units, and transferred grazing privileges of various range users to and from each sub-unit.

Under the regulation governing appeals to this Board in grazing district proceedings, "[n]o adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of Part 4110." 43 CFR 4.478(b).

On the basis of our review we have determined that the order of the hearing examiner in the Black Mountain decision (IBLA 72-34) is reasonable and proper under the grazing regulations. Appellants have failed to show wherein the examiner's actions do not represent substantial compliance with the provisions of 43 CFR Part 4110. Accordingly, we find no error in the examiner's decision and hereby affirm his remand of this case to the Bureau of Land Management for further consideration.

As for the Hardtrigger decision (IBLA 71-1), since the issues are so interconnected with those pertaining to the Black Mountain Sub-Unit, that apportionment cannot properly be determined for one without affecting the equities in the other, we set that decision aside and remand the matter to the Bureau so that they may be reconsidered together in whatever further proceedings may be necessary.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from in IBLA 72-34 is affirmed and the decision appealed from in IBLA 71-1 is set aside and remanded for further proceedings.

Joseph W. Goss  
Member

We concur:

Frederick Fishman  
Member

Edward W. Stuebing  
Member

